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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 287

AL POLIZZI

v.

COWLES MAGAZINES, INC.,

Petitioner.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CLARIFICATION AND TO STAY MANDATE

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OCTOBER TERM, 1952

AL POLIZZI, *v.* COWLES MAGAZINES, INC., *Petitioner.*	No. 287

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CLARIFICATION OF OPINION OF REVERSAL DATED JUNE 1, 1953, AND TO STAY MANDATE

By opinion, dated June 1, 1953, this Honorable Court reversed the judgment of the United States Court of Appeals for the Fifth Circuit heretofore entered on May 23, 1952 and, at the conclusion of said opinion, stated:

> "We express no opinion whether Respondent was 'doing business' in Florida within the meaning of the due process requirements set out in *International Shoe Co.* v. *Washington*, 326 U. S. 310, because Respondent has not contended that the *International Shoe* test is not met. Nor do we decide whether the District Court acquired jurisdiction of the person of Respondent by proper service, because the lower courts did not pass on the question of service. Therefore, the judgment of the Court of Appeals is reversed, and the cause is remanded to the District Court to take jurisdiction of the action and determine

whether the District Court acquired jurisdiction of Respondent by proper service."

Petitioner respectfully requests that the Court clarify the opinion of reversal.

This Court, in reversing the judgment of the Court of Appeals, directs the District Court to determine whether it has jurisdiction over this petitioner, Cowles Magazines, Inc. Hence, the District Court must necessarily determine whether said petitioner, at the time of service of process, was "doing business" within the State of Florida. Both parties on the argument before this Court conceded that this question must be determined in the first instance under the law of the State of Florida, since jurisdiction is based solely on the diversity of citizenship of the parties (*Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64) and service of process was made pursuant to Florida Statute (Fla. Stat. Ann., Sec. 47.17). This Court's opinion, however, omits any instruction to the District Court that Florida law governs.

Petitioner respectfully submits that, without clarification in this respect, the District Court is without any guide and, therefore, might well err as to what law to apply in determining the question this Court has sent back to it for decision. Petitioner, therefore, respectfully requests clarification and amplification of this Court's opinion to the effect that (1) *in personam* jurisdiction over this petitioner is to be determined by the applicable statutory and case law of the State of Florida (*Pulsan* v. *American Rolling Mill Co.*, 170 F. 2d 193, 195, *Rosenthal* v. *Frankfort Distillers Corp.*, 193 F. 2d 137, 141) and (2) nothing in the Constitution or other federal law either prohibits or compels the assertion by the United States District Court in Florida

of jurisdiction over this petitioner. (*Perkins* v. *Benguet Consolidated Mining Co.*, 342 U. S. 437, 440).

Wherefore, petitioner respectfully requests that this Court stay the mandate and so clarify its opinion.

Respectfully submitted,

MANUEL LEE ROBBINS
JOHN F. HARDING
Counsel for Petitioner

Of Counsel:
STERN & REUBENS

I certify that this petition is presented in good faith and not for delay.

MANUEL LEE ROBBINS
Counsel for Petitioner

June 9, 1953.